

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Jack Gerritsen

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File No. EB-03-LA-286
NAL/Acct. No. 200432900004
FRN 0005240072

MEMORANDUM OPINION AND ORDER

Adopted: March 2, 2005

Released: March 4, 2005

By the Chief, Enforcement Bureau:

1. In this *Memorandum Opinion and Order*, issued pursuant to Section 405 of the Communications Act of 1934, as amended (“Act”),¹ and Section 1.106 of the Commission’s rules,² we deny a Petition for Reconsideration (“Petition”) filed on November 2, 2004, by Jack Gerritsen (“Gerritsen”)³ of a *Forfeiture Order*⁴ imposing a Ten Thousand Dollar (\$10,000) monetary forfeiture penalty against him for willful and repeated violations of Section 301 of the Communications Act of 1934, as amended (“Act”).⁵ Specifically, in the *Forfeiture Order*, we found that Gerritsen operated a radio station in the Amateur Radio Services without authorization from the Federal Communications Commission (“Commission”).

2. Reconsideration is appropriate only where the petitioner either demonstrates a material error or omission in the underlying order or raises additional facts not known or not existing until after the petitioner’s last opportunity to present such matters.⁶ A petition for reconsideration that reiterates arguments that were previously considered and rejected will be denied.⁷ Gerritsen raises one argument that has been thoroughly considered and rejected, and thus does not support reconsideration of our *Forfeiture Order*.⁸

¹47 U.S.C. § 405.

²47 C.F.R. § 1.106.

³Gerritsen’s filing is not captioned as a petition for reconsideration and is in letter form. However, we are treating it as a petition for reconsideration of the *Forfeiture Order* pursuant to 47 U.S.C. § 405 and 47 C.F.R. § 1.106.

⁴*Jack Gerritsen*, 19 FCC Rcd 19520 (2004) (“*Forfeiture Order*”).

⁵47 U.S.C. § 301.

⁶See 47 C.F.R. § 1.106(c); *EZ Sacramento, Inc.*, 15 FCC Rcd 18257, ¶ 2 (EB 2000), citing *WWIZ, Inc.*, 37 FCC 685, 686 (1964), *aff’d sub. nom. Lorain Journal Co. v. FCC*, 351 F.2d 824 (D.C. Cir. 1965), *cert. denied*, 383 U.S. 967 (1966).

⁷*EZ Sacramento, Inc.*, 15 FCC Rcd at 18257, ¶ 2.

⁸Specifically, Gerritsen argues that his amateur license, call sign KG6IRO, has not been set aside.

3. Gerritsen also raises new arguments that we have not previously addressed. Gerritsen argues that the *Forfeiture Order* illustrates the fact that “Federal Authorities [are] attempting to deprive me of the most fundamental human right in the First Amend. [sic] to the U.S. Constitution, the right to communicate by way of the spoken word over radio, criticism of the President and his obscene war.” Additionally, Gerritsen states that the Commission must “rely upon written rules that do not allow authorities to use subjective discretion in the denial or granting of any required license to speak, or enforcement of any such denial.” It is well established that the right to free speech does not include the right to use radio facilities without a license and that the licensing system established by Congress in the Act was a proper exercise of its power over commerce.⁹ Consequently, we find these arguments to be without merit.

4. Gerritsen also objects to the *Forfeiture Order* arguing it afforded him none of the “requirements of due process of law.” The *Forfeiture Order* and the Notice of Apparent Liability which preceded it were issued pursuant to the procedure set forth in Section 503(b) of the Act.¹⁰ Sections 503 and 504 of the Act provide safeguards which satisfy Due Process requirements.¹¹ Consequently, we find that Gerritsen’s right to procedural due process was not abridged.

5. Gerritsen’s new arguments do not demonstrate that the *Forfeiture Order* contains material errors or omissions, and we have already considered and rejected his other argument. Therefore, we deny Gerritsen’s Petition.

6. Despite repeated warnings that he holds no valid Commission authorization,¹² investigations by field agents in the Bureau’s Western Region reveal that Gerritsen persists in his unauthorized operations in the Amateur service. Because of Gerritsen’s ongoing illegal activity, we direct

⁹*National Broadcasting Company v. U.S.*, 319 U.S. 190, 227 (1943).

¹⁰Section 503(b)(4) provides:

Except as provided in paragraph (3) of this subsection, no forfeiture penalty shall be imposed under this subsection against any person unless and until--

- (A) the Commission issues a notice of apparent liability, in writing, with respect to such person;
- (B) such notice has been received by such person, or until the Commission has sent such notice to the last known address of such person, by registered or certified mail; and
- (C) such person is granted an opportunity to show, in writing, within such reasonable period of time as the Commission prescribes by rule or regulation, why no such forfeiture penalty should be imposed.

Such a notice shall (i) identify each specific provision, term, and condition of any Act, rule, regulation, order, treaty, convention, or other agreement, license, permit, certificate, instrument, or authorization which such person apparently violated or with which such person apparently failed to comply; (ii) set forth the nature of the act or omission charged against such person and the facts upon which such charge is based; and (iii) state the date on which such conduct occurred. Any forfeiture penalty determined under this paragraph shall be recoverable pursuant to section 504(a) of this title.

47 U.S.C. § 503(b)(4).

¹¹*Leonard D. Martin*, 15 FCC Rcd 22004 (2000).

¹²*Forfeiture Order*, 19 FCC Rcd at 19521.

the Western Region to continue to coordinate with the United States Attorney for the Central District of California in pursuing possible additional sanctions against Gerritsen.¹³

ORDERING CLAUSES

7. Accordingly, IT IS ORDERED THAT, pursuant to Section 405 of the Communications Act of 1934, as amended, and Section 1.106 of the Commission's rules, Jack Gerritsen's Petition for Reconsideration, filed November 2, 2004, IS HEREBY DENIED.

8. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within 30 days of the release of this *Memorandum Opinion and Order*. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.¹⁴ Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN No. referenced above. Payment by check or money order may be mailed to Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. Payment by overnight mail may be sent to Bank One/LB 73482, 525 West Monroe, 8th Floor Mailroom, Chicago, IL 60661. Payment by wire transfer may be made to ABA Number 071000013, receiving bank Bank One, and account number 1165259. Requests for full payment under an installment plan should be sent to: Chief, Revenue and Receivables Group, 445 12th Street, S.W., Washington, D.C. 20554.

9. IT IS FURTHER ORDERED THAT a copy of this *Memorandum Opinion and Order* shall be sent by Certified Mail Return Receipt Requested and by First Class Mail to Jack Gerritsen, 6217 ½ Palm Avenue, Bell, California, 90201.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau

¹³See, e.g., 47 U.S.C. §§ 401(a), 501.

¹⁴47 U.S.C. § 504(a).